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8 Attorneys for Defendant, Counterclaimant and Third-Party Plaintiff
9 MARTIN FRANCHISES, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 ESTATE OF VIOLA B. SPAULDING;
13 FLORENCE SPAULDING, trustee;
14 LYNN SPAULDING, doing business as
15 Spaulding Enterprises; and TINA
16 SPAULDING WARD, doing business as
17 Spaulding Enterprises, THE
18 CONSERVATORSHIP OF EILEEN
19 SPAULDING,

20 Plaintiffs,

21 v.

22 YORK CLEANERS, INC., a dissolved
23 California corporation; ESTATE OF
24 BARNARD LEWIS, DECEASED;
25 DAVID VICTOR LEWIS, an individual;
26 MARTIN FRANCHISES, INC., an Ohio
27 corporation; SETH R. DOLE, an
28 individual; and RUTH DOLE, an
individual; and DOES 1 through 100,

Defendants.

MARTIN FRANCHISES, INC., an Ohio
corporation,

Third-Party Plaintiff

v.

Cooper Industries, Ltd.,

Third-Party Defendant, a Texas
corporation.

CASE NO. C 08-00672 CRB

**THIRD-PARTY COMPLAINT OF
MARTIN FRANCHISES, INC.**

1 Pursuant to Fed.R.Civ.P.14, defendant and third-party plaintiff Martin Franchises, Inc.
2 files the present third-party complaint against third-party defendant Cooper Industries, Ltd. as
3 follows:

4 **JURISDICTION AND VENUE**

5 1. Jurisdiction of this action is founded upon 28 U.S.C. § 6972(a); 42 U.S.C. §§ 9607
6 and 9613.

7 2. Venue is proper in the United States District Court, Northern District of California,
8 because venue is proper in the main action.

9 **PARTIES**

10 3. Martin Franchises, Inc. is an Ohio corporation, and at relevant times herein, was
11 authorized to do business in this district.

12 4. Third-party defendant Cooper Industries Ltd. is a Texas corporation authorized to
13 do business and doing business in this district.

14 **FIRST CAUSE OF ACTION**
15 **[Contractual Indemnity]**

16 5. Martin incorporates by reference all allegations of paragraphs 1-4, inclusive, of this
17 third-party complaint as though fully set forth herein.

18 6. On or about 1981, third-party plaintiff Martin and third-party defendant Cooper
19 entered into a contract.

20 7. A provision in that contract called for Cooper to provide full written indemnity to
21 Martin for injuries and/or damages arising out of the operations of the dry cleaning franchises in
22 question herein.

23 8. Martin has tendered the claim of the plaintiffs herein, including, but not limited to,
24 the Estate of Viola Spaulding, et al., to Cooper.

25 9. To date, Cooper has failed to abide by the contractual provision and has failed to
26 accept indemnity of Martin.

27 10. As a proximate result of Cooper's breach herein, the third-party plaintiff, Martin,
28 has incurred and continues to incur damages, including defense fees and costs. Moreover,
additional damages will ensue if Cooper fails to accept the tender, including potential additional

1 damages in the form of any settlement or judgment.

2 **SECOND CAUSE OF ACTION**
3 **[Declaratory Relief]**

4 11. Martin incorporates by reference all allegations of paragraphs 1 through 10,
5 inclusive, of this third-party complaint, as though fully set forth herein.

6 12. Due to the contractual provision requiring Cooper to indemnify Martin, and due to
7 Cooper's failure to abide by that contractual provision, a present controversy has arisen between
8 Martin and Cooper.

9 13. A declaratory judgment is necessary and proper at this time for the Court to
10 determine the respective rights and liabilities of the parties regarding any contractual indemnity
11 provision contained in the contract between the parties herein.

12 14. Martin has no plain, speedy or adequate remedy at law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, defendant, third-party plaintiff Martin prays for judgment as follows:

15 1. For indemnification pertaining to the Spaulding complaint, with Martin being the
16 beneficiary/indemnitee, and Cooper being the indemnitor;

17 2. For a declaration that the contractual indemnity provision in the contract between
18 Martin and Cooper applies and that, thus, Cooper is obligated to fully defend and indemnify
19 Martin;

20 3. For costs of suit incurred herein;

21 4. For attorneys' fees; and

22 5. For such other and further relief as this Court may deem just and proper.

23 Dated: March 03, 2008

SEDGWICK, DETERT, MORAN & ARNOLD LLP

24 By _____/s/
25 Robert N. Berg

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27 Attorneys for Defendant, Counterclaimant, and Third-
28 Party Plaintiff
MARTIN FRANCHISES, INC.

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